

**CITY OF NEWARK  
DELAWARE**

**PLANNING COMMISSION  
MEETING**

**September 2, 2014**

**7:00 p.m.**

Present at the 7:00 p.m. meeting were:

**Chairman:** James Bowman

**Commissioners Present:** Pat Brill  
Bob Cronin  
Andy Hegedus  
Edgar Johnson  
Frank McIntosh  
Alan Silverman

**Commissioners Absent:**

**Staff Present:** Maureen Feeney Roser, Planning and Development Director  
Mike Fortner, Development Supervisor  
Polly Sierer, Mayor  
Stu Markham, Councilman, District 6

Chairman James Bowman called the Planning Commission meeting to order at 7:00 p.m. and welcomed Frank McIntosh, the new Planning Commissioner from District 6.

Mr. Frank McIntosh: A resident of Newark for 30 years. Stu Markham asked me if I would consider coming on the Commission and I am happy to do so and am very pleased. I have been very involved in mostly the school district in Newark as a volunteer for the last 25 years in many capacities and most recently, headed a charter school board of directors. It was an exciting nine months. Beyond that, I had a career with Junior Achievement which I began in 1972 and retired in 2008 from that and spent the last 25 years of that career here in Delaware and enjoyed it. I am very pleased to be a part of this process.

Mr. Bowman: Welcome aboard, Sir. You will probably see some excitement from time-to-time right here.

**1. THE REVISED MINUTES OF THE JULY 1, 2014 PLANNING COMMISSION MEETING.**

As there were no corrections or revisions, the July 1, 2014 revised Planning Commission minutes were approved as received.

**2. THE MINUTES OF THE AUGUST 5, 2014 PLANNING COMMISSION MEETING.**

As there were no corrections or revisions, the August 5, 2014 Planning Commission minutes were approved at received.

Mr. Bowman: We have had a request to switch items 3 and 4 on the agenda since it appears that Item #3 may take a little bit more time than Item #4. With the Commission's approval we will do that. [Secretary's Note: There was no objection by the Planning Commission members to change the agenda order].

### **3. REQUEST OF THE NEWARK BIKE PROJECT, INC. FOR A TEMPORARY PARKING WAIVER TO CONVERT TWO OFF STREET VEHICULAR PARKING SPACES AT 136 SOUTH MAIN STREET TO BICYCLE PARKING SPACES.**

Ms. Feeney Roser summarized her report to the Planning Commission which reads as follows:

“On August 8, 2014, the Planning and Development Department received a request from Mr. Jamie McGee, Chairman of the Board of Directors of the Newark Bike Project, for a “temporary” two space parking waiver for the property located at 136 South Main Street. The Newark Bike Project is a new tenant in that mixed-use building and makes the request with the owner’s permission. The parking waiver is designated as “temporary” because the request to convert two vehicular parking spaces into two spaces for bicycle parking will last only as long as the Newark Bike Project has a valid lease for the retail space at 136 South Main Street.

Planning and Development Department Report on the 136 E. South Main St. temporary parking waiver request follows:

#### **Property Description and Related Data**

1. Location:

136 South Main Street, on the West side of the road, across from the South Main/Beverly Roads intersection.

2. Size:

1.165 acres.

3. Existing Land Use:

The 136 South Main Street property is currently developed as a three-story commercial/residential mixed-use building with first floor retail space and 22 upper floor apartments.

4. Physical Condition of the Site:

As noted above, the 136 South Main Street property currently contains a mixed use commercial/residential building. The remainder of the site is surface parking and access ways.

In terms of topography, in general, the site slopes gently from high points at its southwest corner towards the east/west portion the property.

5. Planning and Zoning:

The 136 South Main Street property is zoned BB. BB is our downtown central business zone and permits the following:

- A. Retail and specialty stores.
- B. Retail food stores up to 5,000 square feet in maximum floor area, with special conditions.
- C. Restaurants, bakery and delicatessens.
- D. Banks and finance institutions.
- E. Offices for professional services and administrative activities.
- F. Personal service establishments.
- G. Studios for artists, designers, photographers, musicians, and sculptors.
- H. Repair and servicing, indoor and off-site of any article for sale, which is permitted in this district.
- I. Related indoor storage facilities as accessory uses with special requirements.
- J. Accessory uses and accessory buildings.

- K. Public parking garage and parking lot.
- L. Public transit facilities.
- M. Social club, fraternal, social service, union and civic organizations, except on ground floor locations.
- N. Photo developing and finishing.

BB also permits, with a Council granted Special Use Permit, the following:

- A. Retail food stores with more than 5,000 square feet in area.
- B. Drive-in and curb service for other than eating establishments.
- C. Fast-food restaurants with special requirements.
- D. Motels and hotels.
- E. Commercial in-door recreation and in-door theaters.
- F. Instructional, business or trade schools.
- G. Electric gas and telephone central offices and telephone central offices and substations with special requirements.
- H. Tower, broadcasting or telecommunications on existing buildings or structures with special requirements.
- I. Police and fire stations.
- J. Library, museum and art gallery.
- K. Church or other place of worship.
- L. Restaurant, cafeteria style.
- M. Apartments, except on ground floor locations, with special requirements.
- N. Restaurants with alcoholic beverages, with special requirements.

A summary of BB area regulations may also be found below:

- 1) *Minimum lot area.* The minimum lot area shall be 3,000 square feet.
- 2) *Maximum lot coverage.* Buildings or other structures used exclusively for business purposes may occupy the entire lot, with conditions and subject to rear yard requirements.
- 3) *Minimum lot width.* The minimum width of a lot shall be 20 feet.
- 4) *Height of buildings.* Permitted uses in a BB district may be erected to a height of over three stories or 35 feet, with bonus floors for projects meeting certain requirements.
- 5) *Building setback lines.* No setback is required for all structures three stories or 35 feet in height or less. A 20 foot setback shall be required for all buildings above three stories or 35 feet in height.
- 6) *Rear yards.* A rear yard of 15 feet shall be provided for all structures in the BB district, and such rear yard may be used to meet the applicable parking requirement.
- 7) *Side yards.* No side yards are required for buildings up to 35 feet in height. For buildings with floors above 35 feet in height, a minimum side yard of eight feet is required when the property is contiguous to another lot in the same zoning district. When a side lot line forms the boundary line with any residential district, a side yard shall be required equal to the minimum side yard required for that residence district.
- 8) *Parking.* As required in Code Section 32-45.

Regarding BB zoning area requirements, except for the off-street parking waiver, the building meets all applicable underline code stipulations.

Regarding adjacent in nearby properties, the land immediately southwest of the 136 South Main Street site is zoned BN (neighborhood shopping) and contains the Pat's Pizza restaurant. The MI (general industrial) zoned CSX Railroad right-of-way lies northwest of the site, with the UN zoned University Dickinson Dormitory Complex and parking area further to the northwest across the railroad right-of-way. The BC (general business) zoned FedEx/Kinko's Office Services building is located northeast of the site; this facility shares the access way and some parking with the 136 South Main Street property.

Regarding comprehensive planning, the Comprehensive Development Plan IV calls for a combination of auto oriented and/or pedestrian oriented commercial uses at the 136 South Main Street location. The temporary parking waiver request does not conflict with this designation.

Regarding the parking waiver request, please note that the BB district off-street parking waiver program, adopted by the City to encourage quality pedestrian oriented development downtown stipulates that the Planning Commission can reduce or waive the off-street parking standards in Zoning Code Section 32-45(a) after considering the following:

- “A. Whether the applicant has demonstrated the proposed use does not conflict with the purposes of the Comprehensive Development Plan of the City;
- B. Whether the applicant has demonstrated that the proposed use conforms to and is in harmony with the character of the development pattern of the central business district;
- C. Whether the applicant has demonstrated that the proposed use is not highway oriented in character or significantly dependent on automobile or truck traffic as a primary means of conducting business;
- D. That the proposed use will not adversely affect the health or safety of persons residing or working in the vicinity, will not be detrimental to the public welfare, or injurious to property improvements in the vicinity;
- E. The Planning Commission may also consider the availability of off-street parking facilities, the availability of nearby adjacent public parking facilities (within 500 feet) that may be shared by the applicant and an existing or proposed use. In considering this subsection the Planning Commission may require that the applicant submit an appropriate deed restriction, satisfactory to the City, that ensures either the continued validation of and/or the continued use of shared parking spaces in connection with the uses and structures they serve;
- F. The Planning Commission shall consider the advice and recommendation of the Planning and Development Director.”

Please note also that the BB zoning parking waiver procedure permits City Council to review, modify or deny Planning Commission approval, disapproval, or approval with conditions upon the recommendation of a member of City Council, the Planning and Development Director and/or the City Manager.

Regarding the two space parking waiver, our procedures specify that applicants receiving such approvals may make a “in lieu of spaces” payment to the City to be used to improve downtown parking. The required payment for the requested parking waiver, which is based on an estimate of the cost of construction of a surface level parking space provided by the Public Works and Water Resources Department (\$5,833) is as follows:

<u>Number of Spaces</u>	<u>Payment Required</u>
Two (2)	\$583 (5%)

More information regarding this payment in lieu of spaces and related comments regarding the request appear below.

**Parking-Relating History of Site**

The site was originally developed as a three-story commercial/residential mixed-use 14,160 sq. ft. footprint building with 14 upper floor apartments. Surface parking at the time met Code. In 2012, Council approved a resubdivision of the site, which resulted in 22 apartments and a reduction in the commercial space from 14,160 sq. ft. to 13,100

sq. ft. The approved redevelopment required 89 parking spaces onsite and 89 parking spaces were provided. Therefore, there is no excess parking at the site. The request will take two of these required parking spaces out of vehicular access and convert them to bicycle parking only.

### **Departmental Comments**

The City's Planning and Operating Departments have reviewed the 136 South Main Street temporary parking waiver application. The departmental comments are as follows:

#### **Planning and Development Department**

1. The Planning and Development Department notes that the use does not conflict with the purposes of the Comprehensive Development Plan of the City and is in character with the development pattern in downtown.
2. The Planning and Development Department indicates that the applicant believes the bulk of their customers (accessing the Newark Bike Project) will be using bicycles as their mode of transportation, and not vehicles.
3. The Department notes that the Newark Bike Project will be occupying 2,100 sq. ft. of the retail space in the building. This space requires 10 spaces; so even with the 2 bike parking spaces, 8 vehicular parking spaces will still be available to serve the store.
4. The Department indicates that the waiver, if approved, should only apply to 136 S. Main Street while the Newark Bike Project maintains a valid lease. In other words, the parking waiver, if approved, should expire when the lease for the site expires. The lease commenced July 1, 2014 with an initial term of 3 years, with one 5-year option. So, depending on whether the option is exercised, the lease (and associated parking waiver, if approved) will expire June 30, 2016 or June 30, 2021.
5. The Department notes that the required parking waiver fee for two spaces is \$583; but suggests that because of the temporary nature of the parking waiver request, the Planning Commission waive the fee.

No other department provided comments regarding this temporary parking waiver.

### **Recommendation**

Because the Newark Bike Project use conforms to the land use recommendations in Newark's Comprehensive Development Plan IV, because the proposed use does not conflict with the development pattern in the vicinity of the site, and because the waiver will allow the business to serve its customers with minimal impact on the parking system, the Planning and Development Department suggests **that Planning Commission approve the 136 S. Main Street 2 space parking waiver requested on August 8, 2014 with the conditions in this report, including the condition that the waiver only be valid as long as the Newark Bike Project holds a lease for retail space at the site."**

Representatives of the Newark Bike Project are here to answer your questions and I will be happy to answer any questions the Commission has for me.

Mr. Alan Silverman: Assuming the parking spaces abandoned as vehicular parking spaces, will bike racks be placed in those spaces?

Ms. Feeney Roser: Yes.

Mr. Silverman: And would that require a modification with the subdivision land development plan?

Ms. Feeney Roser: No, the parking waiver will be adequate.

Mr. Bob Cronin: Maureen, in your recommendation, I'm not clear, you say, suggest the Commission approve the waiver requested on August 8<sup>th</sup> with the conditions in this report, including the condition so long as the lease is valid. What other conditions are you referring to besides that particular one?

Ms. Feeney Roser: I'm saying that the fee should be waived as well.

Mr. Cronin: For clarity, I would rather see some specific reference made to the waiver of the fee and then take out other conditions because that kind of obfuscates what we are intending to communicate. For example, on the Departmental comment on Item 4, the expiration date, it seems to me that it is quite possible the tenant could, if they exercised the five year option, as that time period comes to maturity they might have another five year option or have the chance to renew beyond that date. Say, it is going to expire either June 30, 2016 or June 30, 2021, I can see where it goes beyond 2021 for good business reasons. So, that is not one of your conditions to have those dates in just as long as it is a valid lease.

Ms. Feeney Roser: Right, so why don't we talk about how to change the recommendation to make you more comfortable with it. Instead of saying, with the conditions in this report, you could say, with the condition that the waiver only be valid as long as the Newark Bike Project holds a lease for the space.

Mr. Cronin: I like that. And, then the fee is waived. I think that would be A-Okay.

Ms. Feeney Roser: Would the Commission like for me to reread the recommendation, then, or does everybody understand that?

Mr. Bowman: Sure.

Ms. Feeney Roser: Because the Newark Bike Project use conforms to the land use recommendations in the Newark Comprehensive Development Plan IV, because the proposed use does not conflict with the development pattern in the vicinity of the site, and because the waiver will allow the business to serve its customers with minimal impact on the parking system, the Planning and Development Department suggests that the Planning Commission approve the 136 South Main Street 2-space parking waiver requested on August 8, 2014 with conditions that the waiver only be valid as long as the Newark Bike Project holds a lease for the retail space at the site and that the parking waiver fee is waived.

Mr. Bowman: Are there any other questions? The applicants are here. They may step to the microphone and please state your name and address, if you would please for the record.

Mr. Jamie McGee: I am a resident of the City of Newark at 38 Winslow Road. I am also one of the founders and Chairperson of the Board of Directors of the charity, The Newark Bike Project.

First of all, thank you for moving us forward on the agenda. We appreciate that. Thanks to the Planning Department for working with us on this request. I have some slides to show you of the current space we have, our challenge for finding bike parking and where we propose to put it and what it might look like.

Mr. Chairman, may we pass out copies of the slides to you?

Mr. Bowman: Yes.

Mr. McGee: We will go top left to right.

The first slide is the front of our building from South Main Street. The unit that you see in brick on the corner as well as the second unit that has this concrete face both are the fronts of our store. We have been at this location, as Maureen mentioned, for a couple of months. We hope to be here for the full length of the lease.

One of the key things we do is help people fix their bicycles. We have volunteers that come in. For instance, people walk in with their own bike and we help them fix up the bike and teach them what is wrong. We are a teaching workshop on a volunteer basis. One of the things we have a challenge about right now is we don't want customers bringing their bikes right into the shop before we have an available repair station. We may have 30 people in the queue with only 7 spaces to repair their bikes. So, we need parking outside for up to 10 or 15 bicycles at a time. And, then we will tell the person in the queue that their timeslot is up and their spot on the stand is available. Then they should go out, get their bike and bring it in.

If you look at the front of the building here, although, the sidewalk overall is quite wide, there is a retaining wall, of a sort, that goes down the middle and splits what are two five foot wide segments in the front sidewalk. As you know, we need to leave five feet of clearance for proper passage on a public sidewalk. So, there is nowhere on that front sidewalk that we can fit bike parking. There are some mulch beds that are sloped and need to be there for aesthetic reasons and I think those are governed by Parks and Recreation. Those are not appropriate to put in bike racks either.

Looking from the back corner towards that spot where the previous photo was taken, you can see that that is all devoted to a ramp. And, again, five foot sidewalks. This is a pretty tightly planned building. The space around it is very minimal. Looking at it from the back you will see that there is not much open space. There is the minimal amount of permeable space for those plantings. There are some bollards there and no parking zones for fire and utility access. The door in the center of that picture is not the door that we prefer customers to come in. We prefer them to come in through the door that is at the end this sidewalk.

Here is a close up of those parking bollards and you can see why there is not really a place to set up a bike rack that is not at risk of getting hit by a truck backing up or fire equipment. There is also a crosswalk right there. So, there is really nowhere close to our shop to put a bike rack.

This view is standing from those parking bollards looking across the back of the building. It is hard to see but there is a curb that goes from the first bush on the left all the way down toward the glass doors. That curb is actually a parking area where a vehicle's bumper can come all the way out to where that curb is. And the remainder of the elevated sidewalk is only, again, five feet. So, we don't have any place that we can put a bike rack legally or logically in this location.

If you look to the center back of the picture, there is an overhanging structure where there are apartments overtop of some car parking spaces. Another 30 feet back in the dark is where the building's bike rack is. That bike rack looks like this and this is when we are not open. So, this is what it looks like for bike parking that is needed by the residents. As you can see, this is designed for about 6 bicycles. There are 16 bicycles there right now, plus a moped. And, you will see that people have chained their bikes to other things like the pipe. One person on the right purchased two locks so they could chain them together to reach the bike rack. These residents need these parking spaces and we don't want our customers to rely on this. This position is also 250 linear feet away from our front door. That is quite a long way for customers to go, especially when we ask them to round trip twice to get their bike and bring it back.

These two spots are not only the closest to our front doors but they are also the two that make the most sense for safety reasons, we believe, and I'll show you why. One is that there is a light post, and I should add that the white car in the picture was there when we took the picture and it wasn't ours so we couldn't move it, but please imagine that that car is taking over one of the two spots we are requesting to convert to bike parking. To the left of the two, you can see we positioned one of our two racks in place. We have a

second rack that is identical but a little bit small that we would put in the right parking position. And, we would propose to put some bolted down swinging rubber bollards in the three positions marked combined with the existing lamp posts in the corner in that top left position, we would have protection from cars pulling into the bike rack area. Another benefit of this spot is that it is right against the South Main Street sign so that bike parking is in clear view of the street which is more secure for both personal and security of one's bicycle and it is also in view of the building security camera, which is useful for bike parking.

Here is an aerial. I can't get my last slide. That is why I brought the printed copies. If you take a look at the last picture on your printed sheet, it is an aerial view and shows the proximity of the two spaces and the relative size of our building. The other big advantage of that location is, if you will notice the "fire lane" words, there are arrows associated with the fire lane markings showing the exit as well as the entrance to this parking lot. We believe that by putting the bike parking on the exit side adjacent to the exit of the lot, we will have a big safety benefit because cars pulling up to the exit of the parking lot have to stop. Anyway, there is a stop sign there. They will have to stop and we don't want to have the bike parking on the entrance side of the parking lot because a driver of a car pulling into the lot off of South Main Street would not have much time to realize that there could be a cyclist right in front of them.

I would love to take any questions and take any feedback on how we can make this plan better and safer.

Mr. Bowman: Are there any questions from the members of the Commission for the applicant?

Mr. Cronin: Mr. McGee, on this overhead picture. If I am numbering the first two spots coming from the sidewalk as 1 and 2 and you have 3, 4, 5, suppose you took spots #6 and #7, you could gain additional space where that hatched triangle is. Did you give any thought to that possibility?

Mr. McGee: That is a good idea. I don't know if the hashed triangle means that we cannot use that for bicycle parking.

Mr. Cronin: I don't know why you couldn't. You might have to discuss it with the landlord, but it seems that you might even be able to get a third rack in there and have two spots plus that hashed triangle.

Mr. McGee: Thank you for that suggestion. Looking at the aerial, I had not thought of that. That might actually work well because that is logically closer to our front door because you don't have to go around the railing as much. That is equally close to us. It is not next to the stop sign but it is on the corner so there is plenty of visibility, too, being on the inside corner of the paths of the cars. So, we could consider putting the bike parking there.

Mr. Cronin: Or for that matter, the other two spots on the end of that rear lot are also where that angle is in the hashed mark. Maybe those two, plus the hashed mark would give you maximum area there even for additional racks.

Mr. McGee: That is an option. I would assume that under the hash marks that there is not space geometrically to put another car spot, but maybe it would work for bicycles. I don't know what the clearance requirements are around a bike rack. It looks like approximately the width of a car spot. So, maybe that would work. It may not be within view of the security camera and it is not in view of the glass. It is hard to tell from this image, but the two proposed spots are directly across from our front door and visible from our front desk. That adds somewhat more security for someone's bicycle but I think that the other option may be, if the Commission would consider both, maybe we could explore that further and then make a choice that is best with the landlord's permission.



Ms. Feeney Roser: I don't think that the Commission has to designate which exact spaces you use, but just approve the two-space waiver, you can then work with Public Works to identify the best spaces.

Mr. McGee: Thank you for that suggestion Mr. Cronin.

Mr. Bowman: Are there any other questions or comments from the members of the Commission? Are there any comments from the public? Hearing none, we will bring it back to the table for a recommendation.

Mr. Hegedus: Since Maureen read the revised version into the record and I didn't write it down. I would like to make a motion that we approve the second reading that our Planning and Development Director read into the record approving the two space waiver.

MOTION BY HEGEDUS, SECONDED BY SILVERMAN THAT THE PLANNING COMMISSION APPROVE THE 136 SOUTH MAIN STREET 2-SPACE PARKING WAIVER REQUESTED ON AUGUST 8, 2014 WITH CONDITIONS THAT THE WAIVER ONLY BE VALID AS LONG AS THE NEWARK BIKE PROJECT HOLDS A LEASE FOR THE RETAIL SPACE AT THE SITE AND THAT THE FEE IS WAIVED.

VOTE: 7-0

AYE: BOWMAN, BRILL, CRONIN, HEGEDUS, JOHNSON, MCINTOSH, SILVERMAN

NAY: NONE

MOTION APPROVED UNANIMOUSLY

#### **4. REVIEW AND CONSIDERATION OF AN AMENDMENT TO THE ZONING CODE REGARDING "NO IMPACT" HOME BASED BUSINESSES.**

Ms. Feeney Roser: We have a little bit of a different approach to this suggested amendment and that is that the Planning and Development Department was lucky enough this summer to have the services of a graduate student intern from the University of Delaware who, under Mike Fortner's guidance, did research and put together the report that you have before you tonight. His name is Evan Horgan and he is here and would like to make a short presentation about what he found and suggestions that the Department is making for changes to the Zoning Code regarding "no impact" home businesses.

Mr. Evan Horgan: Good evening. My name is Evan Horgan and, as Maureen stated, I was an intern for the Planning and Development Department this past summer.

The Small Business Administration defines a home occupations as, utilization of a residential dwelling to provide service, produce a product, and sell merchandise or other entrepreneurial activity for the pursuit of compensation.

Mr. Horgan summarized his report to the Planning Commission which reads as follows:

"Over the recent past, the Planning and Development Department has been asked to evaluate the existing regulations for home based businesses, classified in our Zoning Code as "*home occupations*" and "*Offices, professional, residential*" to determine if they can be simplified for home businesses or occupations that have no effect on the residential character of the home in which they are conducted or on the surrounding area. Presently, Zoning Code Article IV: "Use and Area Regulations for Residence Districts" allows home occupations and residential professional offices only with a Council-granted Special Use Permit under Article XX, Section 32-78, regardless of the minimal impact of the home occupation. The intent of the review, therefore, is to

seek and identify ways to simplify the process for some home occupations, while ensuring the residential character of the home and area is maintained.

## **Background**

The City of Newark's Zoning Code classifies home based businesses into two categories: 1) *Home occupations* and 2) *Offices, professional, residential*.

### **1. Home Occupations**

Code Sec. 32-4 (a)(55) defines a *Home occupation* as: "A use customarily carried on within a dwelling by the inhabitants thereof, which use is incidental and subordinate to the residential use, subject to special requirements set forth in Article IV, Use and Area Regulations for Residence Districts, and Article XX, Section 32-78" (Special Use Permit).

Home occupations, in some form, are allowed with Special Use Permits in residential zoning districts RH, RT, RS (one-family detached residential), RD (one-family semi-detached residential), RM (multi-family dwellings – garden apartments), and RR (row or town houses) as follows:

"Customary home occupations subject to the following special requirements in addition to all other applicable requirements of this chapter:

- a. The practice of a home occupation shall be permitted in a dwelling provided the person so engaged is a resident thereof.
- b. All home occupations shall be subject to the following standards:
  1. The area used for the practice of home occupation shall occupy no more than 25% of the total floor area.
  2. No storage of materials or products outside the dwelling shall be permitted unless completely housed.
  3. The home occupation shall be clearly incidental to the residential use of the dwelling and shall not change the essential residential character of the dwelling.
  4. No external alterations consistent with the residential use of the dwelling shall be permitted.
  5. No display of products shall be visible from outside the building.
  6. One display sign affixed to the building not exceeding a total area of two square feet nor projecting more than one foot beyond the building, and not illuminated, that will indicate from the exterior that the building is being utilized in part for purposes other than that of a dwelling shall be permitted.
  7. No employees shall be permitted in the operation of the home occupation other than two resident occupants of the dwelling."

Regarding other residential zoning districts, RA (multi-family dwellings - high-rise apartments) and AC (adult communities) zonings do not permit home occupations at all, and the New Center Village Overlay district (NCV) permits them with special restrictions, but without the requirement for a Special Use Permit.

### **2. Professional Offices**

Code Sec. 32-4 (a) (82.2) defines *Offices, professional, residential* as: "An office of a professional person in a residential dwelling which is clearly incidental to the residential character of the structure. The office shall be used for the practice of a profession rather than the operation of a trade or business. Artists, teachers, and related professionals may provide instruction limited to one student at a time. Professional occupations shall include doctors, dentists, lawyers, architects, accountants, engineers, musicians, artists, teachers, nurses, or other similar professionals."

Similar to home occupations, professional residential offices, in some form, are also permitted with Special Use Permits in Zoning districts RH, RT, RS (one-family detached

residential), RD (one-family detached residential) and RM (multi-family dwellings – garden apartments) as follows:

“Professional office in a residential dwelling permitted subject to the following special provisions:

a. Professional office is permitted only for the resident-owner of a single-family dwelling.

b. Professional occupations shall be subject to the following standards:

1. Three off-street parking spaces in addition to those otherwise required in this chapter.
2. No more than one person shall be employed by the practitioner of the professional occupation to provide secretarial, clerical, technical, or similar assistance
3. The area used for the practice of a professional shall occupy no more than 25% of the total floor area, including garages.
4. No storage of materials or products outside the single-family dwelling unit shall be permitted unless completely housed.
5. The profession shall be clearly incidental to the residential use of the dwelling unit and shall not change the essential residential character of the dwelling.
6. No external alterations inconsistent with the residential use of the dwelling unit shall be permitted.
7. No display of products or advertising shall be visible from outside the building.”

Zoning districts RR (row or town houses), RA (multi-family dwellings - high-rise apartments) and AC (adult communities) do not permit residential professional offices; and NCV (New Center Village Overlay district) permits them with special restrictions, but without a Special Use Permit.

## **Research**

According to the Small Business Administration (SBA) approximately 69% of new businesses being created start at home, and home based business make up about half of the small businesses in the United States. Furthermore, the emerging trend has led to nearly 13% of the U.S. adult population being engaged in entrepreneurship.

While traditionally zoning codes have banned home businesses, or require potential owners to go through public hearings for approval, many municipalities are easing restrictions on home based businesses to reflect a changing economy resulting in the increased use of information technology and the decreased importance of “brick and mortar” stores, which combine to have limited or no impact on the surrounding residential community.

Progressive zoning codes for home based businesses generally have the following objectives:

- Recognizing the need for some citizens to use their place of residence for limited nonresidential business activities.
- Ensuring that home based businesses are incidental and subordinate to the residential use of the dwelling.
- Protecting and maintaining the character of residential districts, and
- Ensuring that home based businesses do not create excess traffic, activity, noise, or other nuisances.

To make the application processes less onerous for home based businesses, many communities are eliminating the need for a public hearing (in our case, a Special Use Permit) by establishing strict “standards” within the Code for home based businesses to operate. Businesses that fall outside of these standards, still require a “Special Use Permit.” Common regulations include:

- **Regulations to restrict physical changes to the appearance of dwelling unit**

Typical restrictions prohibit exterior physical changes to the home for the purposes of conducting business, as well as prohibiting outside business activity, storage, or displays. Also, there often are further restrictions on signage and commercial vehicles.

- **Regulations to restrict traffic.**  
Many ordinances restrict the number of visitors to home based businesses, as well as restricting the number of employees working in the home. Furthermore, some ordinances restrict business parking, or require that additional parking be provided.
- **Regulations to restrict nuisances and hazards.**  
Ordinances typically prohibit nuisances such as noise and odor, as well as prohibit the use or storage of hazardous materials.
- **Regulations to restrict business activities.**  
Many zoning ordinances list businesses which are restricted or prohibited. Common prohibited home based businesses listed include: Animal kennels, food service and drinking places (except for food service contractors and caterers), and automotive repair services.

### **Source Materials**

To prepare this report, the Planning & Development Department consulted the following:

*“An Examination of the City of Newark’s Home Based Business Ordinance: Case Studies for Future Code Development”* by Tyler Berl, Institute of Public Administration, University of Delaware.

American Planning Association. (2006) *Zoning Practice: Issue Number Nine- Practice Home Occupation*.

*“More and More, There is No Place Like Home for Small Firms”* Nicole Hong, Wall Street Journal, September 30, 2013.

Governmental Law Center; Albany Law School; *“Zoning For Home Occupations: Modernizing Zoning Codes to Accommodate Growth in Home-Based Businesses.”* (2006)

Small Business Administration; “Home-Based Business Zoning Laws” Accessed on October 3, 2013. <http://www.sba.gov/content/home-based-business-zoning-law>

City of Maryland Heights; [Zoning Code](#)

City of Dover; [Zoning Code](#)

Town of Cary, NC; [Zoning Code](#)

City of Wilmington; [Zoning Code](#)

Saint Paul, MN; [Zoning Code](#)

Scottsdale, AZ; [Zoning Code](#)

Chandler, AZ; [Zoning Code](#)

City of Chesapeake, VA; [Zoning Code](#)

Athens, GA; [Zoning Code](#)

## **Proposed No Impact Home Occupation Ordinance Additions**

Though a Special Use Permit is a helpful tool in terms of regulating and limiting the amount of impact a home occupation could potentially have on the community, research indicates that in cases where the home occupation has no impact on the residential character of the dwelling or the surrounding area, a special use permit may be unnecessary. Furthermore, by eliminating the mandate of a Special Use Permit, no impact home occupations may be more inclined to open or operate under Municipal Code.

To respond to the changing economy and encourage entrepreneurship, the Planning and Development Department proposes that home occupations which have no effect or impact on the residential character of a home or surrounding area should not have to go through the Special Use Permit process. Instead, the Department suggests the Zoning Code be amended to create a “no impact” home occupation definition, and strict standards be developed to govern them, in order to safeguard the residential character of the home and the district in which it is located. The process for obtaining approval could then be handled administratively as part of the Business License system for all residential districts. For example, a no impact home business applicant could sign a certificate or affidavit, which would state all the standards associated with a no impact home occupation, and the implications of violating the standards, as part of the approval of the business license. A sample affidavit is attached.

### **Recommendation**

In order to streamline the processes for the operation of home occupations which have no effect upon the residential character of the dwelling unit in which they are conducted or the surrounding area, the Planning and Development Department suggests that the Planning Commission recommend that the Zoning Code be amended in the following ways:

#### **1. Amend Section 32-4 (a) to add a new definition at 32-4 (a)(78.1):**

***“No Impact Home Occupation:*** A use customarily carried out within a dwelling by the inhabitants thereof, which use is inconsequential to the residential character of the structure and surrounding area. The business shall have no non-resident employees, nor involve any customer, client or visitor traffic, including but not limited to vehicles, pedestrians, commercial deliveries in excess of those normally associated with the residential use. No impact home occupations shall include internet based businesses, business consulting, telephone sales/marketing, or any other profession that utilizes technology/communication services as the main means of business operations/communication.”

#### **2. Amend (RH, RT and RS) Section 32-9 (a) by adding a new Section 32-9 (a) (18);**

**Amend (RD) Section 32-10 (a) by adding a new Section 32-10 (a) (18);**

**Amend (RM) Section 32-11 (a) by adding a new Section 32-11 (a) (24);**

**Amend (RA) Section 32-12 (a) by adding a new Section 32-12 (a) (10);**

**Amend (RR) Section 32-13 (a) by adding a new Section 32-13 (a) (21);**

**Amend (AC) Section 32-13.1 (a) by adding a new Section 32-13.1 (a) (13);**

**and**

**Amend (NCV) Section 32-13.3 (a) by adding a new Section 32-13.3 (a) (7) as follows:**

“No Impact Home Occupation in a residential dwelling permitted subject to the following special provisions:

- a. A no impact home occupation is permitted in a dwelling provided the person so engaged is a resident of record of the dwelling.
- b. A no impact home occupation shall be subject to the following standards:

1. The area used for the practice of the home occupation shall occupy no more than 25% of the total floor area, including garage.
2. The home occupation shall be clearly incidental and subordinate to the residential use of the dwelling and shall not change the essential residential character of the dwelling.
3. There shall be no interruption, congestion or change to the character of the surrounding area in terms of appearance, noise, traffic, vehicular parking and employee/customer congregation resulting from the operation of the home occupation.
4. No person other than a member of the family residing on the premises shall be engaged or employed in such occupation.
5. No external alterations inconsistent with the residential use of the dwelling unit shall be permitted; there shall be no evidence of the home occupation may be visible from the street or adjacent properties.
6. No storage of materials or products outside of the residential dwelling unit shall be permitted unless completely housed.
7. No sign or display of products or advertising shall be visible from outside the building.
8. Machinery that causes noises, vibrations, glare, fumes, odor, and dust, detectable at the property line is prohibited. Machinery that causes electrical interference with radio or television reception is also prohibited.
9. No traffic shall be generated in greater volume than would normally be expected in the residential area. The home occupation shall not involve the use of commercial vehicles for delivery of materials to or from the premises in a manner different from normal residential usage.
10. There shall be no increased demand on city services at the site as a result of the occupation.
11. A City of Newark business license, accompanied by a No Impact Home Occupation Application and Affidavit issued by the Planning and Development Department is required.”

Mr. Horgan: I will be happy to field any questions or comments anyone may have.

Mr. Bowman: Do any members of the Commission have any questions for Evan?

Mr. Andy Hegedus: First, I want to say how much I am in favor of changing this to allow a no impact home based business. I thought it was a great idea when it came up in our Comprehensive Plan that we have already approved and recommended to Council. This was one of those short-term actions we were going after, so I am very happy to see this because it really does enhance the goals about economic development and allowing a diversity mix. I think that is great. I will give you my notes after this because there are typos and things that I won't bother talking about and you can clean it up afterwards.

There are a couple of bigger picture comments that I would like a little discussion around, and the first is that I've seen in various places we used the term “no impact home business” and we also use the term of “no impact home occupation.” My thinking about this is that people would go to the State and get a business license and then part of that process requires people to look in their particular city for any code that would need to be followed for a business. So, I think this applies more to a person wanting to start their own business in an entrepreneurial sense in their home rather than being a district sales manager for a region for some other company. That could be a home based occupation because an occupation is defined as a job. I think we're probably better off if we refer consistently throughout the document in terms of home based businesses, rather than occupations. I don't know what the other Planning Commission members think about that, but that was one.

Mr. Silverman: I concur, and this is the transition from an intensive hobby that we do after work into maybe, I want to do this fulltime now, as a business.

Mr. Hegedus: If it is a business, you are going to go get a business license for it from the State. So, I prefer the term “business” instead of occupation.

The other sort of bigger picture thing is, you mentioned in your presentation that there is a City business license, but I’m not sure that people have to apply to the City for a business license. I thought there was only the compliance with this action for a special use permit if it was required. Is there a business license for the City?

Ms. Feeney Roser: Yes, we have business licenses and the intent is that they would have to apply for a business license, and in order to get it, they would have to have a signed affidavit.

Mr. Hegedus: I was unaware of that. I thought if you got a business license through the State, you didn’t come to the City for a business license.

Ms. Feeney Roser: We have our own business license system.

Mr. Hegedus: The other part is in the definition and in Item 4, which is both in your suggested change and in the affidavit section. It talks about a non-resident employee and the fact that there can be none. I think that is too restrictive. If you look at the research you did, the real reason for restricting it to residents of the home only is because you don’t want more traffic, and you don’t want it noticeable or distinguishable from the outside where in this day and age, I could be running a business in my house and I could have an employee or a contracted working relationship with somebody who lives five miles away and they are doing all the social media for whatever I am doing. They are an employee of my firm. I would not meet the definition of this, but it still would be completely non-impactful to the neighborhood. So, I think we should change the definition and also Item 4 to give a little bit of flexibility around that you can have either employees or others that are affiliated with your business as long as they are not spending eight hours a day in your home or that none of the other traffic things are impacted. Am I making sense? They live off premises or they work off premises.

Mr. Horgan: Right, so something like no onsite employees or clients or visitors or things of that nature. Change it to no onsite non-residential employees.

Mr. Hegedus: You might have to tweak the language in the definition as well around that. I would also consider if there is a way to do the affidavits online so that people could click and verify somehow and submit. You can do all kinds of stuff in cool ways electronically. I don’t know that that has to be in here but in the wording or in the affidavit if we can find a way to allow either paper or online that would give us the flexibility when we have the technology in place to click and have it submitted automatically. Minimize the processing time and goes right into your database, you are tracking it all.

The last thing, I mentioned the Comp PlanV before, it would be good, just in the upfront part of this, to discuss that this is consistent with that Plan and want the drivers to get this done so we can link them back and forth.

Mr. Silverman: I am referring to the next to the last page under the recommendation, Item #1, rather than use the term “commercial delivery services” in excess of those normally associated with residential use, it is kind of a wide open definition, limit delivery to package services. That is the UPS type truck. That is what you are looking for. I am looking for permitted as opposed to the small tractor trailer pulling up and a guy offloading something heavy off the tailgate. Is that the kind of thing you are looking for?

Mr. Horgan: Yes.

Mr. Silverman: So, put that in there – package delivery services rather than commercial deliveries. Your statement on no-impact home occupations shall include internet based businesses, etc., it says no impact home occupation shall include internet based businesses. I find this in conflict with your opening statement saying that the internet is

the reason why you can do things at home. I understand what you mean. You don't want boiler rooms operating out of peoples' houses, but to tie this into business consulting, that is an internet based business.

Mr. Hegedus: I think what you are saying, Alan, is that the "shall" could be a "may" because there could be internet based businesses that don't meet the definition.

Mr. Silverman: Correct. Rather than excluding it completely, you have done a very nice job of putting together a performance based standard. Don't put a "shall not" in there. See how it works. If it becomes a nuisance or expands beyond what this definition calls for, then it can be brought under control and you are right, there is a "may" in there.

I think also, the check and balance with respect to the activity in the neighborhood and what is approved within the Planning and Development Department is balanced by neighborhood Code enforcement. So, there is kind of a check and balance there in monitoring. I like the idea of the certificate and certification. Moving on to the last page under the heading No Impact Home Occupation in Residential heading, Paragraph A, what is a resident of record? To me, that is anyone living there.

Ms. Feeney Roser: I am sorry to interrupt. We had this conversation with the City Solicitor. Originally, we said owner occupant and he said that if there was a person who was renting and they were the tenant of record, it seems discriminatory not to allow them to do it as well.

Mr. Silverman: So, the intent is anyone who resides at that premises, owner or non-owner.

Ms. Feeney Roser: Yes.

Mr. Silverman: I'm a little confused over Item #4, No person other than a family member. . . Does that mean only one family member can engage in the occupation?

Mr. Horgan: The main reason that family was included was to restrict things such as traffic and other employees coming to park there, maybe the term family can be changed to just "fellow resident" because if someone was already living there, of course, they are already utilizing the parking and things of that nature. Rather than having outside employees come to the site.

Mr. Silverman: That is what I envisioned. So, instead of hiring my brother-in-law who is going to drive into work in my home occupation, that is prohibited.

Mr. Horgan: Yes.

Mr. Silverman: But, if I want to employee my son or daughter during the summer to work with me, that is permitted.

Mr. Horgan: Yes.

Ms. Feeney Roser: Yes, if they reside on the premises.

Mr. Hegedus: We already talked about my comment on Item #4 which will change something but maybe for your comment it's "no persons (plural) other than members (plural) of the family residing on the premises shall be engaged in the occupation. So, that would let a husband and wife work together.

Ms. Pat Brill: Fellow residents.

Mr. McIntosh: What if people live in the property and they are just friends – they are not a family?

Ms. Brill: That is what we just said.



Mr. Silverman: The contemporary definition of family extends beyond legal relationships.

Mr. Hegedus: Frank, are you saying no persons other than those residing on the premises?

Mr. McIntosh: Why wouldn't you just say that?

Ms. Feeney Roser: Let me ask this question to get to Andy's point a while ago? Is this where, when you talked about not being able to afford somebody to do your social medial, what if we added at the end of that, so it's now reads, "No person other than those residing on the premises shall be engaged or employed in such occupation within the home or residence" and that would handle both those issues.

Mr. Hegedus: I am trying to follow the letter of the law, so if you have the business and you have your friend a few miles away that is working out of their house doing your social media and they are an employee, and then they come over to your house for a meeting for a couple of hours, obviously, that is not a problem, right? You should be able to do that, but you want to make sure that it is not full time all the time and it is not a regular thing that cars are parked there every day all day. That is what you are trying to avoid, but if somebody shows up to your house for an hour once a month for a meeting or wants to show you something cool that they did, that should be okay. Right?

Mr. Silverman: If you are going to meet with your accountant?

Mr. Hegedus: Yes. You meet with your accountant. It is those kinds of things that I was stumbling on on #4 when you got to the family member, the residents, people coming over for a quick meeting, but it is not fulltime all the time because that is what your research showed. It was one of the main reasons that restriction was there because you don't want traffic and you don't want all those other external things.

Mr. Silverman: Number 9 goes back to my point of package service delivery normally associated with residential neighborhoods approach. Item #11, I like the idea of the business license. The City already has a process where with a building permit, for example, clearly displayed, I am just wondering whether some kind of identification should be displayed in the window of the premises.

Mr. Hegedus: My personal vote is no. If I am running an internet business out of my house, I don't want a little thing on my front window of my house when people 99% of the time are coming over for socializing and you are trying to make it a no impact so, a little sticker in the window starts having a minor impact. I think it has to be there and be available when the Code people come by and check. You have to be able to produce your license, but I don't think it has to be posted.

Mr. Silverman: Maybe it should be displayed along with the business license. I have one sitting over my desk. You will never see it, but it is displayed. The law requires it to be displayed.

Mr. Horgan: Do you mean within the interior?

Mr. Silverman: Interior, yes. It is essentially available for inspection. So, if a neighbor starts complaining and the Code Enforcement Officer walks in, it is right there. There is no question.

Ms. Feeney Roser: If we changed #11, first of all, it should say required not require, and available for inspection. Would that handle your concern?

Mr. Silverman: Other than agreeing with the former position that this does get right to the Comp Plan that we adopted, it appears to go along with the foundation of economic development, people starting out small. Evan did a very nice job on this.

The other thing I would like to do is go through some information after the end of our presentation involving a naming system that I would like to see incorporated into the affidavit that uses standard definitions that are used by other agencies, including licensing agencies, that we may make part of this. What it does is forces the applicant to focus exactly what kind of business they have and makes it easier for enforcement.

Ms. Feeney Roser: What I was thinking is that, based on what we have heard and how important it is to get this right, we should get your comments tonight, and then we can go back and revise the report, revise the recommendations and then bring it back next month, if that makes sense to everyone so that we make sure we have it the way we want to have it when we make a recommendation to Council, instead of trying to make final changes at the table that may not be exactly what we would like to recommend. So, any suggestions that you have for the affidavit are appropriate now.

Mr. Silverman: There is a coding structure that is used that originated with the federal government and the business community. Some of you may remember the old Standard Industrial Classification Code (SICC System). This is the 21<sup>st</sup> Century version of that. It is called NAICS. It stands for North American Industry Classification System. It is a rather interesting system. It is rather uncomplicated for something the Federal Government came up with. It is used by the Bureau of Labor Statistics. It is used by the Census and it is even used by the IRS. When you are self-employed, and you have to identify your business, you go into this table and you pick what represents your business. It is a common definition. Everybody understands what it is about. It is amazing the variations it can have on one thing and it helps the individual who is going to be making application focus on exactly what they want with respect to their certificate.

Moving on to Page 2, here are some examples of what is found under the NAICS. There are, I believe, 25 categories and then there are many subcategories under those. What I would like to do is call attention this evening, moving onto Page 3, to Sector 54 which is Professional, Scientific and Technical Services. This is the kind of thing I can see occurring under this no impact home occupation. Persons working at a computer at a desk area in a small bedroom, they don't have people coming or going, there are no goods stored, they don't publish anything, and UPS dropping of the envelop (inaudible).

Page 4, I take Sector 54 which is Professional, Scientific and Technical Services, I want to run a building inspection service out of my house. You are going to sell your house, you call me and I come out, State licensed, City licensed and I inspect your house and I will give you a report on the house. You don't come to me. I leave every day for work and go out in the field. That would fall under Sector 54.

Page 5, it would fall under 1. Professional Service. It is not scientific. It is not technical. It is professional service and then it would fall under subcategory of building inspection services, #350. So, when I come to the City for my affidavit, I go online, which is on the last page of the document. There is a lookup tool. I can identify myself by company. So, if I want to know what category McDonalds fall under, I can put McDonalds in. I can identify myself by key research, home inspection, and it will take me in and show me definitions and I choose the one that most closely identifies what I want to do. Home Building Services can have many branches or they can bring many images or ideas to a lot of people. Is your termite inspector Home Building Inspection Services? Is the guy who comes in and looks for lead paint Home Building Inspection Services? According to this NAICS System, they are not. 86 gives a working definition.

Page 7, there are cross references that show some of the differences. Under Section 56, Professional Services – that is what the 1 stands for – a Code 710 is exterminating pest control. So, that is not what this individual does. 54, okay, we are back in the same category; 1, we are a professional service again; but, this business is identified as #620, Environmental Consulting Services inspecting buildings for hazardous materials and are classified within the particular industry. So, that is not what I am looking for. I don't do that. I inspect for real estate purposes. And then, finally, there is a catch-all down here. So, it can take you to other areas to figure out what is your service. And, as I said, on the last page there are helper tools already on the internet which will help you identify your particular business.

This is something that will work very well with this application if there is a place for it. NAICS identifier and the person identifies exactly what their business is. They don't have to describe, well, I think I'm going to do this and I'm going to inspect that. They are pretty much limited to the kind of definition they pick out or they can choose to expand it. Maybe it is a combination. But, at least going into it and somebody phones in with a complaint, for example, and says I think there is a business going on here, whoever is working in the administrative side that issues the permit can say, yes, this is their business. It has been identified under this particular system as such and such and so and so. Where can I find out about it if you go on the internet? It just cuts down a lot of back and forth kind of time.

This system lends itself not only to the idea of defining the no impact business, but it also lends itself to identify actual businesses. If a dentist is permitted in a residential district you can actually start listing the kinds of things found in NAICS, even by nature of heading. Professional Services including this list is typical and then it eventually carries over into the Zoning Code. So, when we are talking about a hotel as a business vs. a rooming house as a business vs. somebody that takes in roomers, they are all clear definitions and they are all identified by a category that anyone can go to. There is no thinking about what do they do. I would like to see this NAICS system incorporated into the Affidavit and maybe we can use this as kind of a test case for expanding the idea of helping us define businesses and occupations.

Ms. Feeney Roser: I will say that the business license system also has its own categories and I do not believe that they use NAICS to categorize them, but I don't see that it would be harmful to just put it on the Affidavit. I assume we will spend some time explaining to people what it is and what it means and where to find the information to determine which category would apply, but I would imagine there is space for it right next to the zoning of the property for it, if the Commission thinks it is appropriate. I wouldn't want it to substitute for the description, though.

Mr. Silverman: I agree.

Ms. Feeney Roser: Someone can tell us what they are doing and then when we see what they are actually doing, it doesn't seem like that is the right code, for example. So, I don't think there is an issue with adding that code if the Commission thinks it is a valuable thing to do.

Mr. Silverman: It is a starting point and it gets people to focus on what they are really trying to do.

Mr. Edgar Johnson: Are we making things more difficult? We are talking about no impact home occupations that include internet businesses, business consulting, telephone sales and marketing and so forth. That tells me what the person is doing. I don't need to have a number 54, 1, 350 to tell me. And, if you want to incorporate this in the City of Newark and other businesses and identify it through this system, that is fine, but this is no impact home occupation. I think it muddies the waters, fogs the air, if you will, of what this is all about.

Mr. Silverman: The IRS is going to ask for it anyway.

Mr. Johnson: Let the IRS ask for it. Why should we make things more difficult for no impact businesses?

Mr. Silverman: And there is some cross reference with the business licenses. It says, I'm in personal services. I've got one of those licenses. It is a 9999 and that allows me to do a wide range of things.

Mr. Johnson: Great. This is "no impact" home occupation, and we are talking about internet, sitting at a desk with a computer and using technology. It's pretty simple to me. Tell me what you are doing? I'm sales and marketing. Good. Great. I don't need a number 54, 1, 350. I don't know what all that means. That is just my point of view, Alan. Sorry.

Mr. McIntosh: With regard to that last point, I would think it would be easier if the licensing department has a way of doing it, if you are going to have any system that it be compatible with that one, as opposed to introducing a new system. It is one relatively small city and why would we have different things. I think that gets very confusing. If, in fact, this is limited to – and that is a question, actually – to internet based businesses, does that preclude any other kind of business that might be a single individual's dream?

Mr. Horgan: From my understanding . . .

Mr. McIntosh: That is a question. It has nothing to do with this. I'm back to the no impact occupation shall include internet businesses, etc. It doesn't say it is limited to that. It says it will include those things. Are there other kinds of businesses that could qualify under this rule that we put together besides them?

Mr. Horgan: I'd imagine once a person describes a business, it would be up to the discretion of the Planning and Development Department if it would be classify under professional office or customary home occupation rather than the no impact definition or standards. Most of the examples that I am familiar with or related to fall under internet communication.

Ms. Feeney Roser: But, it is possible that there could be a no impact business that had nothing to do with the internet.

Mr. Horgan: Yes.

Mr. McIntosh: So, if I wanted to open up a daycare center, would that be a no impact business?

Ms. Feeney Roser: No, there are impacts from that. That would be a special use permit.

Mr. McIntosh: Basically saying then, you are there by yourself, you are doing something, hopefully, for profit somewhere down the road and you are using your intellect and your other computing capacity to make that business go, yet, you could have a lot of visitors during the day. It wouldn't be the delivery persons. It could be clients coming in.

Mr. Johnson: No.

Mr. McIntosh: Okay, but you could still be an internet business and have clients stopping by to meet with you and chat with you, etc.

Mr. Silverman: Let me give you an example. I have a friend who makes custom wedding jewelry – wedding bands, rings. He will take old family gold – grandma's and grandpa's wedding ring – and make a new set of wedding rings out of it for the kids. He does that in his basement. He goes out and meets with the client, looks at what he offers, he collects their jewelry, brings it back, melts it down, and recasts it. You never even know it's there. That is actually manufacturing, but it is still a nonimpact business.

Ms. Feeney Roser: To get to your point, Frank, there should not be clients coming in and out or it's not "no impact" on the neighborhood. So, we would tell somebody who had regular clients that they would need to apply for a Special Use Permit, rather than get something administratively that says it's okay for them to go ahead and get a business license.

Mr. McIntosh: That clarifies it.

Ms. Feeney Roser: Evan, you were going to respond to that?

Mr. Horgan: The only comment I had is, some of the characteristics described earlier may be applied better to professional office and customary home occupations rather than no impact definitions.

Mr. Hegedus: All I was going to say was in that place where we changed the “shall” to a “may,” what that said was, it may be an internet based business. It may be phone, but that opens the possibility to a no impact business being something other than internet bases as long as all the other criteria are met, which means you can’t tell that it is going on because there isn’t somebody showing up every half hour.

Mr. Silverman: I could be a proofreader, I could be a manuscript editor.

Mr. Johnson: Do you need a business license to be a proofreader?

Mr. Silverman: It depends. People you contract with may require a business license. I had to have a Delaware business license because the people I worked with insisted on it along with insurance and everything else.

Mr. Bowman: Are there other questions or comments from members of the Commission.

Mr. Bob Cronin: This whole thing to me is a matter of degree. I would be happier with “low impact.” I don’t see how you get anything that is absolutely zero impact. When we get to the very first thing under B 1., The area used for the practice of home occupation shall occupy no more than 25% of the total floor area including garage. I don’t think there is a lot of equity in that. I know houses in Newark that have two-car garages, three-car garages and one residential property has a ten-car garage. There are 6,000 sq. ft. houses, there are 1,200 sq. ft. garages. 25% of one is a lot different than 25% of another number. I think to have any percentage, and maybe having somebody come in with their tape measure and measure how much is this and how much is that, and the square footage police, I for one, believe, let the people live in the space they want to live in and let them work in the space they want to work in. It is their own dwelling. As long as it is going have no impact, what do we care what the percentage is. Some families have a husband and wife and five kids. Others have just two people or one person in the house. So, to try to manage the square footage is, I think, ill-advised and I would want to try to set a standard that applies equally well in all situations and it is so, so very hard to do that. I think, I for one, am not in favor of 25% or probably any percentage, to tell you the truth.

Ms. Feeney Roser: Mr. Cronin, I don’t mean to interrupt you, but it is a threshold we use in the Code for other businesses like the home occupations and the professional businesses, and it makes sense if you are trying to ensure that the residential character of the structure is not being altered. I think it makes sense if you are trying to keep the residential character to say, a quarter of the structure may be used for business and the dwelling is still a home. If not, and you need more space than that, you need an office outside the home.

Mr. Cronin: It may make sense to you and I understand that it is 25% in other categories, but that doesn’t mean the 25% factor is valid there either because of the way people use their properties and changing life styles and changes in the economy and so forth. If we are going to look at this more fully for the next month or so, I think we ought to consider that. Again, some people have one-car, two-car, three-car and many-car garages. Somebody that has very little space but has a great idea and they want to do something and it is going to be 35 or 50%, I don’t think whether it is this category or low impact or the other category above this is professional office or whatever, I don’t think the percentage factor is particularly useful or valid from my point of view. Suppose somebody is a sales person or going to be hypothetically selling or marketing solar roof panels and they want to put a solar roof on their house, well, I guess that is permitted use of a roof of a house, but could it be denied because it is part of their business? If your business is selling playground equipment and you want to put playground equipment in your back yard for your kids or to take photos of it, it is just so hard to write something that is encompassing all possible and reasonable situations. No storage of materials unless it is completely housed. Well, if someone puts a couple of sheds in their back yard. It is housed but after a while you get too many sheds and your neighbors are complaining and maybe your business is selling sheds. I don’t know, you put sheds up. Increased City services, I know a house in particular that presently seems to get a lot of UPS deliveries, probably coming and going, and often times in flattened out cardboard boxes stuffed out of a container, every week stuffed out of the City container. Now,

maybe their grandfather is already doing it. That is probably an increase in volume of City services compared to a typical dwelling for the neighborhood.

Does that 25% include basement space?

Ms. Feeney Roser: Yes.

Mr. Bowman: Is there anyone else?

Mr. Silverman: I have a question that I would like to direct to Maureen. How would a commercial vehicle be handled? I'm in the house inspection business. I have my very large Ford pickup truck with a cap on it and all the ladders on the roof and it is parked in front of my house. Am I allowed to do that?

Mr. Johnson: It has to be off the street.

Ms. Feeney Roser: No signage on the truck?

Mr. Silverman: Signage on the truck, oh yes. Can I park that truck in my driveway?

Ms. Feeney Roser: Yes.

Mr. Silverman: I didn't know what the City position was on that.

Mr. Johnson: You can't park it in the street. You can park it in your driveway.

Mr. Bowman: Are there any other questions or comments from the Commission. If there aren't, we should open this up to public comment. Evan, please stand by for questions.

Mr. Jim McKelvey: 48 Winslow Road: I am very sensitive to this business of accurate language having been involved in some controversy on what this means or what that means. I read this proposal through and I loved the wording, "no impact home occupation." No impact, not low impact. Not my accountant coming once or twice. Geez, I'm having a law suit and I'm going to have him come every week. He's here every day. If I am going to have a home occupation that is no impact, I need to go see my lawyer or go see my accountant or the guy who is handling my marketing over the internet, I have to go see him if I can't handle it on the internet. That says no impact. I applaud this idea to make it easier for small business. A business that has no impact, what a wonderful thing. Terrific. The low impact sounds like a slippery slope to me and it would be hard to define it again. I'm leery about that. So, I would suggest with it, no impact, and make it very clear. Nothing, zero. That would be clear and very useful to these folks, in my opinion. Thanks for letting me offer.

Mr. Bowman: Is there someone else that would like to comment from the public. Hearing none, back to the table for a recommendation from the Commission.

Ms. Feeney Roser: Evan worked really hard on this, considering the comments that the Commission made, I would like the Department to rework the report and then bring it back to you at the next meeting. But, if the Commission would like to go ahead, certainly we can do that and we can make the changes that you suggest as part of the Council packet.

Mr. Bowman: There are one of two possibilities. We try to change it tonight to everybody's satisfaction, which probably isn't going to work out too well or we postpone it to the October meeting so there is a timeframe to get back with the suggested changes. Those are the options. The Chair will entertain a motion.

**MOTION BY HEGEDUS, SECONDED BY BRILL TO POSTPONE AMENDING THE ZONING CODE: NO IMPACT HOME BUSINESSES TO THE OCTOBER 7, 2014 PLANNING COMMISSION MEETING.**

**VOTE: 7-0**

AYE: BOWMAN, BRILL, CRONIN, JOHNSON, HEGEDUS, McINTOSH,  
SILVERMAN  
NAY: NONE

MOTION PASSED UNANIMOUSLY

Ms. Feeney Roser: Thank you Evan.

Mr. Bowman: Evan, we appreciate your hard work.

Mr. Bowman: I have a personal announcement to make. This will be my last meeting in attendance as a Planning Commissioner. I have debated long and hard over the last six months or so about it being time to retire after spending some 23 years on the Commission. I outlasted one Planning Director. I don't think I had anything to do with his retirement; and Maureen has been very supportive and I think it is time to move on. So, as of the close of the meeting tonight, I will be retiring from the Commission.

I would like to thank all of you and the past Commissioners that I have had the opportunity to work with over the years. I was originally appointed by Councilwoman Irene Zich in 1991. When she retired from Council, Jerry Clifton repeatedly, over some protest, reappointed me. In fact, a few years back, Jerry actually decided to retire from Council and promptly got reelected in the only landslide write-in vote in Newark history, to the best of my knowledge, and then he twisted my arm to go back on the Commission. So, I have been here long enough. Again, I would like to thank everyone for the opportunity. It has been a learning experience. It has been a lot of fun at times. It has been trying at times, but it certainly has been a learning experience over these years and it has reaffirmed my faith in what this country and its government is all about. It is still a government of the people, by the people and for the people and that comes right down to the local level, even to these volunteer positions on the Planning Commission. So, again, thank you all very much. I wish you the best of luck in continuing your service to the Commission.

There being no further business, the meeting adjourned at 8:16 p.m.

Respectfully Submitted,

Elizabeth Dowell  
Planning Commission Secretary.